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NebFact



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Setting Up Your Own Business: **INS Compliance in Hiring Employees**

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While the information provided in this document is thought to be accurate, you should carefully read and follow U.S. Immigration and Naturalization Service rules and regulations regarding compliance with employment eligibility requirements for hiring. Your best source for this information is INS Form M-274, *Handbook for Employers*. To secure a free copy, call the toll free order line for INS forms (800-870-3676).

If you are considering employing one or more persons for your business, you are required to comply with United States Immigration and Naturalization Service (INS) requirements for determining the employment eligibility of each individual you hire. This NebFact provides a short description of the documentation procedures for determining employment eligibility. It also summarizes your responsibilities as an employer to complete and maintain employee eligibility documentation for each person hired, and to follow non-discriminatory hiring procedures and practices.

For information on other aspects of hiring and employee management, please consult *EC 90-432, Guide to Employee Relations*.

INS Form I-9

Immigration and Naturalization Service Form I-9, *Employment Eligibility Verification*, is used to establish the employment eligibility of persons being considered for employment. This form must be completed for each employee within three days of the start of employment. If the duration of employment is less than three days, Form I-9 must be completed at the time employment begins.

The form is one page in length and requires only a few minutes to complete when the job applicant has the required documentation. To ensure that job applicants and employers are able to identify those documents, the back of the Form I-9 has two lists of acceptable documents. Examples of these documents are depicted in INS Form M-274. Most employment-eligible persons will have no difficulty in providing these documents.

The job applicant must certify that the information provided on Form I-9 is accurate. As the employer, you also must sign a certification described below under the heading "The Employer's Responsibility."

Exceptions to the Requirement for Form I-9

Part Two of Form M-274 lists four exceptions to the requirement for having on file a completed Form I-9 for each person who works for you. The Form I-9 requirement does not apply when:

- the employee was hired prior to November 6, 1986 and has been continuously employed by you since that date.
- The employee does casual domestic work in a private home "on a **sporadic, irregular, or intermittent** basis."
- The person performing work for you is an independent contractor.
- The person performing work for you is employed by someone else and performs contract labor for you.

These are the only exceptions identified by INS.

The Employer's Responsibility

Under the provisions of the Immigration Reform and Control Act of 1986, employers are required to establish the employability status of each employee hired after November 6, 1986. Without regard to the length of the expected or actual term of employment, the employer must establish that the person hired is eligible for employment. The determination of employment eligibility is accomplished by the job applicant and the employer in completing INS Form I-9. Instructions for completing this form must be available to each job applicant and employee.

In completing the employer's section of Form I-9 you must sign under penalties of perjury a certification that:

- you have personally examined the prescribed document or documents offered by the job applicant.
- You have decided the document(s) are genuine.
- You have decided that the documents apply to the person applying for employment.
- You have decided that the person applying is eligible for employment in the United States.

A completed Form I-9 must be in the employer's file and available for inspection "by officials of the U.S. Immigration and Naturalization Service, the Department of Labor, and the Office of Special Counsel for Immigration Related Unfair Employment Practices" (Form I-9 Instructions).

The required period for retaining a completed Form I-9 is stated as, "Employers must retain completed I-9s for three (3) years after the date of hire **or** for one (1) year after the date employment ends, whichever is later" (Form I-9 Instructions).

The only known exceptions to Form I-9 requirements are the four described above. Even if you are personally acquainted with a person you wish to hire and know he or she is eligible for employment in the United States, a Form I-9 must be completed and certified by both the job applicant and the employer and maintained on file.

Keep this lack of exceptions in mind if your business is organized as an entity separate from yourself. When your business is incorporated, is a limited liability company, or is any other form of

organizational unit separate from you and you work as an employee, you are not self-employed. Even though you are the owner, you are an employee required to complete and have on file a Form I-9 for yourself.

Non-discrimination Requirements

In addition to your responsibility as employer to establish the employment eligibility of each employee hired after November 5, 1986, you have an equal responsibility to fully comply with nondiscrimination laws and regulations. This means you are required to avoid discrimination among employment-eligible persons in hiring, discharging, and all other aspects of employment.

Refusing employment to an alien who is not authorized to work in the United States **is not** discrimination. However, it **is** discrimination to request that the employee provide more than the required number of documents, or to refuse to accept required documents that appear to be genuine and applicable to the person presenting them.

These two employment requirements place on the employer the responsibility to establish the employment status of every business employee hired after November 6, 1986, and to do so in ways that avoid discrimination.

Recommended Information Sources

Your best source of comprehensive information on meeting INS requirements for verifying the employment eligibility of employees is INS Form M-274, the *Handbook for Employers*. As indicated above, call the INS order line at 800-870-3676 to place your order for a free copy. It will be mailed to you. The *Handbook* contains two copies of Form I-9, and provides copying instructions. You are allowed to make any number of copies of Form I-9, but you must follow INS instructions for making copies.

For additional information or other assistance, contact the U.S. Immigration and Naturalization Service office serving Nebraska: U.S. Immigration and Naturalization Service, 3736 South 132nd Street, Omaha, NE 68144. The telephone number of the Omaha office is: 402-697-9155.

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